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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA,  
6 Plaintiff,

7 - against -  
8 RARE BREED TRIGGERS, LLC; RARE BREED  
9 FIREARMS, LLC; LAWRENCE DEMONICO,  
10 KEVIN MAXWELL,  
11 Defendants.

12 CASE NO.: 1:23-cv-00369-NRM-RML  
13 -----X

14 ZOOM VIDEOCONFERENCE

15 July 25, 2023

16 10:04 a.m.

17 DEPOSITION of DAVID SMITH, before  
18 Melissa Gilmore, a Stenographic Reporter and  
19 Notary Public of the State of New York.  
20  
21  
22  
23  
24

25 Job No.: NJ6018951

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2 A P P E A R A N C E S:

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18

19 ALSO PRESENT:

20 JONATHAN JACOBS, Division Counsel, ATF

21 KEVIN MAXWELL

22

23

24

25

FEDERAL STIPULATIONS

IT IS STIPULATED AND AGREED by  
and between the attorneys for the respective  
parties herein, that the filing, sealing,  
and certification of the within deposition  
be waived.

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as to the  
form of the question, shall be reserved to  
the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may be  
sworn to and signed before any officer  
authorized to administer an oath, with the  
same force and effect as if signed to before  
the Court.

- oOo -

Page 5

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SMITH

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D A V I D        S M I T H,        called as a

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witness, having been duly placed under

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oath by a Notary Public, was examined and

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testified as follows:

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13 Q. Have you completed classification  
14 reports when you were an FEO, firearms  
15 enforcement officer?

16                   A.     Yes, sir, I did.

17 Q. And about how many of those have you  
18 done?

19           A.       As I previously mentioned, I don't  
20       know the exact number.   Somewhere around five  
21       to 600.

22 Q. Okay. The five to 600 encompasses  
23 both technical examination reports and  
24 classification reports?

25           A.     It encompasses both reports for



[illegible]

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14 Q. When you're conducting your  
15 examination to classify a device, are you  
16 required to take input from others about the  
17 device?

18 A. In general, yes.

19 Q. And who are you supposed to consult?

20 A. Other FEOs, the managers and usually  
21 we have a technical review.

22 Q. And what's a technical review?

23 A. When you finish your draft of your  
24 report, whether it be criminal or industry, it  
25 goes to a technical and writing review prior to



1 SMITH

2 being submitted to the chief for their review  
3 and signature.

4 Q. And so does the technical review, do  
5 they provide edits to the report, potentially?

6 A. Yes, they do.

7 Q. And that would be what I call style,  
8 like punctuation, right?

9 A. That would be one type of edit, yes,  
10 sir.

11 Q. Would they also perhaps suggest  
12 changes to the analysis itself in terms of how  
13 it's described?

14 A. They may do that, sir.

15 Q. And, ultimately, the chief has to  
16 sign off on any report as well?

17 A. Yes, sir.

18 Q. Can the chief recommend changes?

19 A. Yes, sir.

20 Q. If there was going to be  
21 disagreements within the agency over the  
22 classification of a device, could that  
23 disagreement come from the technical review,  
24 disagreeing with the examinations officer?

25 A. Yes, sir, it could.

[illegible]

25

Q. Does the -- does the FATD have

1 SMITH  
2 meetings where they may discuss and even vote  
3 on a determination or classification?

4           A.       FATD has held meetings about  
5       different classifications. I have never seen a  
6       vote on any classification.

[illegible]



[illegible]

[REDACTED]

[REDACTED]

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11 Q. Have you had any communications with  
12 other firearms examination officers that also  
13 examined the FRT-15?

14	A. Yes, I have.
----	-----------------

15 Q. And could you identify those  
16 persons?

17           A.       I could identify some of those  
18   people.  Ron Davis, Cody Toy, Anthony Ciravolo.  
19   There may be others.  I couldn't guarantee who  
20   all has examined them.  That's not my purview  
21   or under my job.

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[illegible]

14 Q. Where two or more FEOs gathered to  
15 discuss how the FRT-15 should be classified.

16           A.     There were review meetings of FRT-15  
17     classification.

18 Q. Is that review meeting -- does that  
19 relate to what we discussed earlier about the  
20 technical review of a classification?

21 A. Yes, sir.

22 Q. Okay. So these are meetings where a  
23 classification had been drafted and people were  
24 meeting to discuss the draft classification?

25                   A.     Yes, sir.

[illegible]

■

■

2 Q. Could you identify any firearms  
3 examination officer, if any, who was of the  
4 opinion that the FRT-15 was not a machinegun?

5 A. I cannot.

6 Q. And same question to anyone who is  
7 not a firearms examination officer, maybe a  
8 manager or someone else at the agency.

9 A. Not within ATF that I have met.

10 Q. Okay. I'm now going to ask you some  
11 specific questions about -- more specific  
12 questions about your examination.

13 Do you know what date you started  
14 your first examination for an FRT-15?

15 A. It would have been in the beginning  
16 of June. I would have to look at the report as  
17 to exactly what day I received it.

18 Q. Okay. And I will give that to you  
19 in a moment.

20 Do you know about how long it was  
21 from when you started your examination to when  
22 you completed your report, roughly?

23 A. If I remember, it was roughly a  
24 month.

25 Q. Was there -- did anyone disagree

1 SMITH  
2 with your analysis in the technical review?

3 A. No, sir.

4 Q. Did the chief disagree with your  
5 analysis?

6 MR. BLUME: Let me --

7 A. No, sir.

8 MR. BLUME: You already answered.  
9 Go ahead. Keep going, Mike.

10 MR. COLUMBO: I won't do anything  
11 more there.

12 MR. BLUME: Okay.

[REDACTED]

Page 40

[illegible]



Page 41

[illegible]

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[illegible]

Page 46

[illegible]







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[illegible]



12 Q. Does -- does a firearms examination  
13 officer typically conduct the examination of a  
14 device that he referred to the agency's  
15 attention?

16           A.       Sometimes, sometimes not. It's all  
17       up to who the chief assigns that case.





[illegible]

[illegible]

[illegible]

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10 Q. Circling back to your description of  
11 the movement of the bolt carrier.

12 You wrote that -- is it fair to say  
13 that you're saying that, by the action of the  
14 FRT-15, there comes a point when the trigger --  
15 I'm sorry -- when the trigger is forced forward  
16 and locked in the forward position; is that  
17 right?

18 A. Yes, sir. There is a point at which  
19 the trigger is forced forward and the fire  
20 control group is locked out of manipulation by  
21 the shooter, similar to any other machinegun  
22 fire control group that's hammer fired.

[REDACTED]

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[illegible]



[illegible]

[illegible]

Category	Value (Relative Length)
Category 1	100%
Category 2	95%
Category 3	90%
Category 4	85%
Category 5	90%
Category 6	100%
Category 7	88%
Category 8	100%
Category 9	95%
Category 10	100%
Category 11	65%

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C E R T I F I C A T E

STATE OF NEW YORK )

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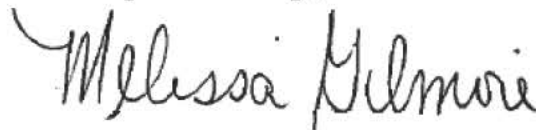
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public  
within and for the State of New York, do hereby  
certify:

That DAVID SMITH, the witness whose  
deposition is hereinbefore set forth, was duly  
placed under oath by me and that such  
deposition is a true record of the testimony  
given by such witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 25th day of July, 2023.



MELISSA GILMORE

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ERRATA SHEET  
VERITEXT/NEW YORK REPORTING, LLC  
CASE NAME: UNITED STATES OF AMERICA v. RARE BREED  
TRIGGERS, LLC; ET AL  
DATE OF DEPOSITION: 7/25/2023  
WITNESSES' NAME: David Smith

PAGE	LINE (S)	CHANGE	REASON
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\_\_\_\_\_  
David Smith

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(NOTARY PUBLIC)

\_\_\_\_\_  
MY COMMISSION EXPIRES: